

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

SHALEIA SHOEMAKER,)	
)	
Claimant,)	IC 2006-529296
)	
v.)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
ALLIANT TECHSYSTEMS,)	AND RECOMMENDATION
)	
Employer,)	
)	
and)	
)	
INSURANCE COMPANY OF THE STATE)	
OF PA,)	Filed August 21, 2008
)	
Surety,)	
)	
Defendants.)	
_____)	

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Alan Taylor, who conducted a hearing in Lewiston on November 15, 2007. Claimant, Shaleia Shoemaker, was present in person and represented by Scott Chapman of Lewiston. Defendant Employer, Alliant Techsystems (ATK), and Defendant Surety, Insurance Company of the State of PA, were represented by Bentley Stromberg of Lewiston. The parties presented oral and documentary evidence. This matter was then continued for the taking of post-hearing depositions, the submission of briefs, and came under advisement on May 22, 2008.

ISSUES

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 1

The issues to be resolved are:

1. Whether the condition for which Claimant seeks benefits was caused by the industrial accident;
2. Whether Claimant's condition is due in whole or in part to a pre-existing and/or subsequent injury or condition;
3. Claimant's entitlement to medical care; and
4. Claimant's entitlement to temporary partial and/or temporary total disability benefits.

Claimant asserted in her briefing the issue of entitlement to attorney fees pursuant to Idaho Code § 72-804. This issue was not noticed for hearing and thus, pursuant to Idaho Code § 72-713 will not be considered presently.

ARGUMENTS OF THE PARTIES

Claimant asserts that her November 17, 2006, industrial accident caused a permanent aggravation of her pre-existing back condition, that she has been unable to work since that time, that she has not been released to work and is entitled to additional medical benefits and temporary disability benefits.

Defendants contend that Claimant had a significant pre-existing low back condition which was only temporarily aggravated by her industrial accident. Defendants also assert that in light of Claimant's pre-existing condition and several subsequent non-industrial traumas, she has not proven that her need for additional medical care or temporary disability benefits is related to her November 17, 2006, accident.

EVIDENCE CONSIDERED

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 2

The record in this matter consists of the following:

1. The testimony of Claimant taken at the November 15, 2007, hearing;
2. Claimant's Exhibits A through D and F through I admitted at the hearing;
3. Defendants' Exhibits 1 through 17 admitted at the hearing;
4. The post-hearing deposition of Rodde Cox, M.D., taken by Defendants on December 7, 2007; and
5. The post-hearing deposition of Kay Rusche, M.D., taken by Claimant on December 10, 2007.

Defendants' objections at pages 15 and 18 of Dr. Rusche's deposition are sustained pursuant to JRP 10(E)(4).

After having considered the above evidence, the Referee submits the following findings of fact and conclusions of law for review by the Commission.

FINDINGS OF FACT

1. Claimant was born in 1981. She lived in Lewiston and was 26 years old at the time of the hearing. Claimant did not graduate from high school but has obtained her GED and is a licensed cosmetologist. She has worked as a housekeeper and flagger. Claimant attended two years of college in criminal justice.

2. In April 1997, Claimant was involved in an auto accident when the car in which she was riding at 30 to 40 miles per hour struck a tree. She was not wearing a seat belt. Claimant was treated at a hospital and had low back pain as a result of the accident.

3. In March 1998, Claimant had an onset of severe low back pain when she bent over to pick up her baby. The pain was so severe it caused her to fall to the floor and she sought care at a

hospital emergency room where she was diagnosed with lumbar strain and treated with Vicodin.

4. In August 1998, Claimant again sought medical treatment for another onset of intense low back pain when she went to pick up her baby. She reported she had experienced intermittent back pain since her auto accident the year before. She refused to cooperate with straight leg raising testing because it hurt to move her legs. She was treated with prescription medications including Vicodin.

5. On December 3 and 6, 2004, Claimant was cleaning up apartments when she experienced the onset of intense low back and thigh pain after bending over vacuuming. Claimant presented to Kay Rusche, M.D., on January 5 and 12, 2005, who diagnosed mechanical low back pain. Dr. Rusche noted that Claimant's low back pain had worsened and was shooting down into her thighs, and her feet were going numb more frequently than usual. Claimant was treated with physical therapy and medications. Dr. Rusche examined Claimant on February 9, 2005, and noted her continued low back pain radiating into her buttocks with diminished deep tendon reflexes in the knees and ankles.

6. On June 1, 2005, Claimant was carrying a picnic basket and suffered low back pain which radiated into her buttocks. She sought treatment from Dr. Rusche who noted that her back pain was worse on the right than on the left. Claimant's symptoms continued beyond July 20, 2005, and she continued to treat with Dr. Rusche who diagnosed mechanical low back pain. Dr. Rusche's notes indicate that Claimant was still receiving prescription medications for her low back pain on August 16, 2005.

7. On September 9, 2005, Claimant aggravated her back moving a traffic control sign. Dr. Rusche again diagnosed mechanical back pain and prescribed additional medications including

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 4

hydrocodone.

8. On January 13, 2006, Claimant sought medical treatment for a migraine. She reported her medical history including chronic back pain.

9. In June 2006, Claimant began working at ATK assembling center fire ammunition. At hearing Claimant testified that she had no back pain from June until November 2006. However, in her deposition, Claimant testified that she sometimes had low back pain between her vacuum cleaning incident and November 17, 2006.

10. On November 17, 2006, Claimant was working the night shift at ATK when she and another employee lifted a garbage can full of brass cases which she estimated weighed approximately 100 pounds. Claimant testified she felt shooting pain down her back and buttocks, and into her thighs. She reported the incident to her coworker and to her supervisor who assigned Claimant light duty work for the rest of her shift. The following day Claimant worked her regular shift and performed her regular duties without complaint, although she testified at hearing that her back was still hurting. Claimant also worked her regular shift on November 19th without complaint. She has not worked since. Her supervisor's incident report notes that Claimant worked her regular shifts on November 18 and 19, and that Claimant's soreness was gone. Claimant testified at hearing that her back continued to hurt and she took ibuprofen and Aleve. Claimant was not scheduled to work November 20 through 23.

11. On November 23, 2006, Claimant bent over to tie her shoes at home and felt intense back pain and shooting pain down her buttocks and legs so severe that she testified she fell to the floor.

12. On November 24, 2006, Claimant advised ATK that her back was worse. She was

directed to seek medical care. That same day Claimant presented to Sherry Stoutin, M.D., a partner of Dr. Rusche, who diagnosed lumbar strain, prescribed Vicodin, and took Claimant off work for two weeks. Dr. Stoutin recorded that Claimant reported she was lifting heavy boxes at work and injured her low back.

13. On November 25, 2006, Claimant's former boyfriend grabbed her by the neck and wrists, shook her, and threw her out of his house. Claimant called the police over the incident, but testified at hearing that the incident did not aggravate her back. She presented to a hospital emergency room that same day and was treated by Matthew Lysne, M.D. Dr. Lysne recorded Claimant's past medical history of chronic low back pain and current Vicodin prescription for back pain.

14. On December 7, 2006, Dr. Rusche examined Claimant, diagnosed anxiety and lumbar strain, released her from work, and referred her to physical therapy.

15. On December 15, 2006, Dr. Stoutin responded to a question from the Surety's adjuster, and when informed that Claimant had experienced back pain on November 17, but returned to regular duty without complaint on November 18 and 19, and then suffered severe back pain when bending over to tie her shoe at home on November 23, indicated that she could not state that Claimant's need for further medical care was a result of her employment at ATK.

16. Dr. Rusche scheduled Claimant for a follow-up visit and released Claimant to return to work on December 21, 2006, but did not inform Claimant of the work release. Claimant did not keep her appointment with Dr. Rusche on December 21, 2006, and testified she did not know Dr. Rusche had released her to return to work that day. Defendants paid for Claimant's medical care and time loss until December 21, 2006, and denied additional benefits thereafter based upon Dr.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 6

Stoutin's opinion and Dr. Rusche's work release.

17. On December 22, 2006, Claimant called police from a bar where she had been drinking and dancing—possibly in high heels. On December 27, 2006, police were summoned to remove Claimant from another bar.

18. Claimant did not report for work as scheduled by ATK on December 22, 23, or 24, 2006. ATK then directed Claimant to report to its health department on January 8, 2007, to review any work restrictions and Claimant's return to work status. Claimant did not comply. On January 18, 2007, ATK terminated Claimant's employment for her failure to report to work, or to ATK's health department, or to contact ATK. Claimant continued to treat with Dr. Rusche.

19. In early March 2007 Claimant traveled to Dubai for a two week vacation.

20. On March 22, 2007, an MRI of Claimant's lumbar spine showed desiccation of the disk at L5-S1 and a shallow broad-based paracentral disk protrusion on the right at L5-S1, not impinging the spinal cord or any exiting nerve root.

21. In April 2007 Claimant was involved in a physical altercation in which Claimant's boyfriend's mother slapped Claimant allegedly because Claimant was advancing toward her as if to physically attack her.

22. On May 8, 2007, Dr. Rusche authored a letter opining that Claimant's back pain and right-sided L5-S1 disk bulge resulted from her industrial injury. Dr. Rusche was not aware of Claimant's 1997 and 1998 back symptoms when she wrote the letter.

23. On May 20, 2007, Claimant presented to a hospital minor care department complaining of back pain. She acknowledged receiving 42 Norco tablets on May 15 and reported she had exhausted that supply two days earlier. She was given Percocet.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 7

24. On May 22, 2007, Claimant presented to a hospital emergency room complaining of breathing distress and back pain and seeking pain medication. Claimant indicated she took 45 Vicodin per week. Nancy Berkheiser, M.D., recorded her impression of possible drug seeking behavior and declined to provide any narcotic medications.

25. On June 4, 2007, Claimant was the victim of battery when her boyfriend became intoxicated and threw her to the ground. Claimant sought refuge in her car, but her boyfriend drug her from her car by her hair, and then again by her feet, and threw her to the ground repeatedly. Claimant acknowledged at hearing, and testified in a criminal proceeding against the boyfriend, that the incident bruised her back and she had shooting sciatic pains for quite a while afterwards. Dr. Rusche increased Claimant's pain prescriptions as a result of this incident.

26. On June 18, 2007, Claimant called police because she was out drinking with friends and a man pulled her chair over causing her to fall to the floor. Claimant admitted this hurt her back.

27. On June 23, 2007, Claimant was involved in a physical altercation with a woman at a bar. Claimant shoved the woman against a wall and struck her. Claimant testified this did not hurt her back.

28. On September 8, 2007, Claimant sought treatment at a hospital emergency room for low back pain and was seen by Juergen Lang, M.D. Dr. Lang noted that Claimant had been seen one week prior at another hospital for back pain. She was treated with prescription medications.

29. On September 16, 2007, Claimant got into a fight with another woman at a bar. Claimant testified the woman swung a bottle at her whereupon Claimant struck her and they both went to the floor. Claimant admitted this hurt her back.

30. On October 12, 2007, Claimant was examined by Rodde Cox, M.D., at Defendants'

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 8

request. Claimant told Dr. Cox that being thrown around by her boyfriend in June 2007 did not hurt her back—exactly contrary to the testimony she gave at hearing and in the criminal proceeding against the perpetrator of the battery. Dr. Cox concluded that Claimant’s November 17, 2006, industrial accident caused a temporary exacerbation of her pre-existing back pain.

31. On October 19, 2007, Claimant presented to Dr. Grissom on referral from Dr. Rusche. Dr. Grissom recorded that at the time of Claimant’s November 2006 industrial accident she experienced excruciating low back pain with radiation down her left buttock and leg which had not improved. Dr. Grissom performed a lumbar epidural steroid injection at L4-5. Claimant subsequently received a second lumbar steroid injection from Dr. Grissom.

32. Claimant testified at hearing that her back has not improved and is still sore in spite of all the medical treatment she has received. She has not worked since November 19, 2006. She now has difficulty lifting heavy objects. Prior and subsequent to her industrial accident Claimant has struggled with depression and alcohol. Claimant regularly goes out and drinks with friends and tries dancing—sometimes in high heels. She notes increased back pain the next day. Claimant currently takes prescription medications including hydrocodone, Prozac and amitriptyline.

33. Having closely compared Claimant’s testimony with the medical records and testimony of other witnesses, the Referee concludes that Claimant has a poor memory for her medical history and a number of other events. She is not always a reliable witness.

DISCUSSION

34. The provisions of the Workers’ Compensation Law are to be liberally construed in favor of the employee. Haldiman v. American Fine Foods, 117 Idaho 955, 956, 793 P.2d 187, 188 (1990). The humane purposes which it serves leave no room for narrow, technical construction.

Ogden v. Thompson, 128 Idaho 87, 88, 910 P.2d 759, 760 (1996). However, the Commission is not required to construe facts liberally in favor of the worker when evidence is conflicting. Aldrich v. Lamb-Weston, Inc., 122 Idaho 361, 363, 834 P.2d 878, 880 (1992).

35. **Medical causation.** The crux of the first two issues is whether the condition for which Claimant seeks benefits was caused by her industrial accident or some other event. A claimant must prove not only that he or she suffered an injury, but also that the injury was the result of an accident arising out of and in the course of employment. Seamans v. Maaco Auto Painting, 128 Idaho 747, 751, 918 P.2d 1192, 1196 (1996). Proof of a possible causal link is not sufficient to satisfy this burden. Beardsley v. Idaho Forest Industries, 127 Idaho 404, 406, 901 P.2d 511, 513 (1995). A claimant must provide medical testimony that supports a claim for compensation to a reasonable degree of medical probability. Langley v. State, Industrial Special Indemnity Fund, 126 Idaho 781, 785, 890 P.2d 732, 736 (1995). “Probable” is defined as “having more evidence for than against.” Fisher v. Bunker Hill Company, 96 Idaho 341, 344, 528 P.2d 903, 906 (1974). Magic words are not necessary to show a doctor’s opinion was held to a reasonable degree of medical probability; only their plain and unequivocal testimony conveying a conviction that events are causally related. See, Jensen v. City of Pocatello, 135 Idaho 406, 412-13, 18 P.3d 211, 217 (2001).

36. In the present case, Claimant asserts that Defendants are responsible for her continuing medical treatment and time loss noting: “An employer takes an employee as it finds him or her; a preexisting infirmity does not eliminate the opportunity for a worker's compensation claim provided the employment aggravated or accelerated the injury for which compensation is sought.” Spivey v. Novartis Seed Inc., 137 Idaho 29, 34, 43 P.3d 788, 793 (2002), citing Wynn v. J. R. Simplot Co., 105 Idaho 102, 104, 666 P.2d 629, 631 (1983). Defendants do not dispute this axiom

but essentially contend that Claimant has not shown her ongoing back pain is caused by her November 17, 2006, industrial accident.

37. Claimant herein acknowledges a history of pre-existing back pain. However, she testified that her prior back pain was different from that which she experienced on November 17, 2006, in that it did not shoot down her buttocks and legs. However, the medical records reveal Claimant reported low back pain, including radiating pain into her buttocks and legs in December 2005 and January 2006. At hearing Claimant acknowledged that bending over to lift her baby in 1998 caused back pain so severe that she fell to the floor and was similar to the back pain she experienced when bending over to tie her shoe at home on November 23, 2006.

38. Dr. Stoutin, Dr. Rusche's partner, examined Claimant on November 24, 26, and December 1, 2006, and treated Claimant for the first two weeks after her November 17, 2006, industrial accident. Dr Stoutin expressly indicated she could not state that Claimant's need for medical care after December 15, 2006, was a result of Claimant's employment at ATK.

39. Dr Cox, who examined Claimant on October 12, 2007, concluded that Claimant's November 17, 2006, industrial accident caused a temporary exacerbation of her pre-existing low back pain. He indicated that 55% of adults in the population have disk bulging or protrusion, but they experience no back pain. He testified that it is therefore not abnormal to have a disk protrusion, and that L5-S1—the level of Claimant's disk protrusion—is the most common location. Dr. Cox emphasized the importance of correlating MRI findings with the physical examination and presentation of the patient, and testified that Claimant's MRI findings did not correlate with her presentation. He found no evidence of active radiculopathy and testified that Claimant's ongoing low back symptoms are subjective.

40. Dr. Cox also testified at length regarding a number of specific tests which he administered to Claimant and which tend to show an overstatement of pain and disability. In her pain drawing Claimant listed five different types of pain in her back and buttocks. Dr. Cox testified that medical studies confirm it is a red flag when individuals use more than three different modalities to describe their pain in the same area. Dr. Cox testified that Claimant's self-rated pain disability index of 76% was very high given the objective evidence of Claimant's MRI and physical exam, thus suggesting symptom magnification. Dr. Cox noted similar tendencies to overstatement in the Oswestry Function Test and the Short-Form McGill Pain questionnaire which Claimant also completed. There is no indication that Dr. Rusche performed any of these tests when evaluating the validity of Claimant's complaints.

41. Dr. Cox reviewed Claimant's medical records dating back to her 1998 bouts of low back pain. He noted Claimant has had several episodes of aggravation of back pain including March 1998 when she bent over to pick up her baby, August 1998 when she again bent over to pick up her baby, and multiple aggravations in December 2004 when she bent over vacuuming. Dr. Cox noted that after Claimant's November 17, 2006, industrial accident, the records establish her back pain was improving until she bent over to tie her shoe on November 23, 2006, and experienced intense low back pain—another aggravation of her pre-existing low back condition and very consistent with her onsets of back pain when bending over to pick up her baby in 1998 and when bending over to vacuum in 2004. Dr. Cox also opined that being pulled from a car onto the ground, being thrown on the ground, having a chair pulled out from under her, and being grabbed and shaken by the neck could all exacerbate Claimant's low back pain.

42. Dr. Rusche opined in her May 8, 2007, letter that Claimant's back pain and L5-S1

disk bulge resulted from her November 17, 2006, industrial injury. Dr. Rusche was Claimant's treating physician. She acknowledged that prior to the November 17, 2006, industrial accident Claimant had a significant history of pre-existing low back pain and was prone to temporary aggravation of her low back pain. Dr. Rusche testified Claimant's back pain resolved between September 2005 and November 2006. However Dr. Rusche's records establish she prescribed hydrocodone for Claimant on September 9, 2005, due to persisting back pain which was getting worse. When Claimant presented at the hospital on January 13, 2006, she reported a history of chronic back pain. Similarly, when Claimant sought medical attention on November 25, 2006, after being shaken by the neck and thrown out of the house by her former boyfriend, she reported a history of chronic low back pain. Both histories suggest that Claimant herself considered her low back pain a longstanding or recurring issue.

43. Dr. Rusche acknowledged in her deposition that Claimant's low back symptoms prior to November 17, 2006, may have been related to the L5-S1 disk desiccation which was revealed in the March 2007 MRI. Dr. Rusche testified that she could not document any objective medical evidence that Claimant was incapable of working. She acknowledged that if Claimant were capable of dancing in high heels, Dr. Rusche would wonder about the alleged intensity of Claimant's back pain.

44. Dr. Rusche's causation opinion was apparently driven by her understanding that Claimant's low back pain complaints prior to November 17, 2006, had always resolved, but that since the November 17, 2006, accident Claimant's low back pain had not resolved. However, Claimant admitted in her deposition that she sometimes had low back pain between the time she hurt her back while vacuuming in December 2005 and her industrial accident at ATK on November 17,

2006. Furthermore, in her deposition, Dr. Rusche readily admitted she was not informed of Claimant's 1997 auto accident which resulted in intermittent back pain for over a year and Claimant's March 1998 and August 1998 trips to the emergency room for severe back pain when she bent over to pick up her baby. Moreover, subsequent to Dr. Rusche's May 8th letter, Claimant was drug out of her car by her feet and hair and thrown repeatedly to the ground, her chair was pulled over and she fell to the floor, and she was involved in two bar fights with other women. Claimant acknowledged that most of these events hurt her back. Although Dr. Rusche was deposed after these events, there is no indication she was informed of most of them and she did not address their impact in her May 8, 2007, opinion regarding the causation of Claimant's ongoing low back symptoms. Thus Dr. Rusche was not informed of multiple significant pre-existing and subsequent traumas which Claimant suffered and which the medical records and Claimant's own admissions establish caused her back pain.

45. The Referee finds the opinions of Dr. Stoutin and Dr. Cox more persuasive than that of Dr. Rusche. Claimant's November 17, 2006, industrial accident resulted in a temporary aggravation of her low back pain. Her continuing symptoms, which may be overstated, may well result from subsequent non-industrial traumas. Claimant has not proven that her continuing condition and symptoms are related to her industrial accident.

46. **Additional medical treatment.** Idaho Code § 72-432(1) requires that an employer shall provide for an injured employee such reasonable medical, surgical or other attendance or treatment, nurse and hospital service, medicines, crutches, and apparatus, as may be reasonably required by the employee's physician or needed immediately after an injury or manifestation of an occupational disease, and for a reasonable time thereafter. If the employer fails to provide the same,

the injured employee may do so at the expense of the employer. Of course, the employer is only obligated to provide medical treatment necessitated by the industrial accident. The employer is not responsible for medical treatment not related to the industrial accident. Williamson v. Whitman Corp./Pet, Inc., 130 Idaho 602, 944 P.2d 1365 (1997).

47. As noted above, Dr. Stoutin expressly indicated she could not state that Claimant's need for additional medical care after December 15, 2006, was due to the November 17, 2006, industrial accident. After examining Claimant on October 12, 2007, Dr. Cox opined that Claimant needed no more medical treatment due to the industrial accident. Dr. Rusche, whose opinion was favorable to Claimant, was not informed of multiple prior and subsequent traumas which caused Claimant back pain. Considering that subsequent to the industrial accident Claimant was shaken by the neck and thrown out of a house, drug out of her car by her feet and hair, thrown repeatedly to the ground, fell to the floor when her chair was pulled over, and participated in two bar fights, the Referee is not persuaded that Claimant's need for further medical treatment is due to her industrial accident.

48. Having failed to prove that her present low back condition is due to her industrial accident, Claimant has also failed to prove that her need for additional medical treatment after December 15, 2006, is due to her November 17, 2006, industrial accident.

49. **Temporary disability.** Claimant alleges entitlement to additional temporary disability benefits. Idaho Code § 72-102 (10) defines "disability," for the purpose of determining total or partial temporary disability income benefits, as a decrease in wage-earning capacity due to injury or occupational disease, as such capacity is affected by the medical factor of physical impairment, and by pertinent nonmedical factors as provided for in Idaho Code § 72-430. Idaho

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 15

Code § 72-408 further provides that income benefits for total and partial disability shall be paid to disabled employees “during the period of recovery.” The burden is on a claimant to present medical evidence of the extent and duration of the disability in order to recover income benefits for such disability. Sykes v. C.P. Clare and Company, 100 Idaho 761, 605 P.2d 939 (1980).

50. In the present case, Dr. Stoutin released Claimant to return to work with a 10 pound lifting restriction on December 2, 2006. As noted above, Dr. Stoutin indicated on December 15, 2006, she could not state that Claimant’s need for additional medical care was due to the industrial accident. Dr. Cox examined Claimant on October 12, 2007, and found her able to work without restrictions. Dr. Rusche prospectively released Claimant to return to work on December 21, 2006, with the expectation Dr. Rusche would examine Claimant on that date and make a final assessment of her ability to work. Dr. Rusche later indicated she had not released Claimant to return to work except in error. Dr. Rusche’s perspective that Claimant remains unable to work is unpersuasive as noted above because Dr. Rusche was not informed of multiple prior and subsequent traumas which Claimant suffered. Dr. Rusche acknowledged that there was no objective indication Claimant could not work.

51. Defendants paid Claimant’s temporary disability benefits until December 21, 2006. Claimant has not proven her entitlement to additional temporary disability benefits.

CONCLUSIONS OF LAW

1. Claimant’s industrial accident of November 17, 2006, caused a temporary aggravation of her pre-existing low back condition.

2. Claimant has not proven that the condition for which she seeks benefits was caused by her industrial accident of November 17, 2006.

3. Claimant has not proven that she is entitled to additional medical care after December 15, 2006.

4. Claimant has not proven that she is entitled to additional temporary disability benefits.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, the Referee recommends the Commission adopt such findings and conclusions as its own, and issue an appropriate final order.

DATED this 12th day of August, 2008.

INDUSTRIAL COMMISSION

_____/s/_____
Alan Reed Taylor
Referee

ATTEST:

_____/s/_____
Assistant Commission Secretary

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

SHALEIA SHOEMAKER,)	
)	
Claimant,)	IC 2006-529296
)	
v.)	ORDER
)	
ALLIANT TECHSYSTEMS,)	
)	
Employer,)	
)	
and)	
)	Filed August 21, 2008
INSURANCE COMPANY OF THE STATE)	
OF PA,)	
)	
Surety,)	
)	
Defendants.)	
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Pursuant to Idaho Code § 72-717, Referee Alan Taylor submitted the record in the above-entitled matter, together with his recommended findings of fact and conclusions of law to the members of the Idaho Industrial Commission for their review. Each of the undersigned Commissioners has reviewed the record and the recommendations of the Referee. The Commission concurs with these recommendations. Therefore, the Commission approves, confirms, and adopts the Referee's proposed findings of fact and conclusions of law as its own.

Based upon the foregoing reasons, IT IS HEREBY ORDERED that:

1. Claimant's industrial accident of November 17, 2006, caused a temporary aggravation of her pre-existing low back condition.
2. Claimant has not proven that the condition for which she seeks benefits was caused by her industrial accident of November 17, 2006.
3. Claimant has not proven that she is entitled to additional medical care after December 15, 2006.

4. Claimant has not proven that she is entitled to additional temporary disability benefits.

5. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this 21st day of August, 2008.

INDUSTRIAL COMMISSION

____/s/_____
James F. Kile, Chairman

____/s/_____
R.D. Maynard, Commissioner

____/s/_____
Thomas E. Limbaugh, Commissioner

ATTEST:

____/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of August, 2008 a true and correct copy of **Findings, Conclusions, and Order** was served by regular United States Mail upon each of the following:

SCOTT CHAPMAN
PO BOX 446
LEWISTON ID 83501

BENTLEY G STROMBERG
PO BOX 1510
LEWISTON ID 83501

ka

____/s/_____